

QBE European Operations

Managing Contractors

Issues Forum



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The presence of Contractors at a place of work can present a range of potential risks, from the hazards that already exist but also from the creation of risks to themselves and others through the work they undertake.

Managing Contractors

Liabilities associated with managing Contractors, and the duty of care owed to them, is often misunderstood or even ignored.

To compound the problem, anomalies exist between the Approved Code of Practice to the Construction (Design and Management) Regulations 2007 (CDM 2007) which states that clients do not have to visit a site to supervise or check the construction work standards. Compare that against the Health

& Safety Executive's (HSE) own guidance document, INDG368 which states "Clients, Contractors and Sub-contractors should monitor their health and safety performance and clients should make sporadic checks on the Contractors' performance."

In this article, we highlight the legal principles for managing Contractors and offer a best practice, categorised approach to the fundamental aspects of managing Contractors within your business.



Who and what are Contractors?

The term contractor applies to those individuals or organisations who are engaged to perform a certain task implying a degree of independence by that person or organisation. The basic test of whether a person is an independent contractor is one of control over the undertaking of the work specified.

For clarity, contractor personnel who are merely visiting your premises for meetings are deemed to be visitors, not Contractors.

Employers need to be aware of and understand the differences between 'labour only' and 'bona fide' Sub-contractors.

Labour only Sub-contractors (LOSC's) work under the employer's direction and control, so for insurance purposes are deemed to be 'employees'. These will include temporary workers, agency workers and hired-in labour, (your QBE Employers Liability policy gives a full definition of those deemed to be employees). Bona fide Sub-contractors (BFSC's) work under their own company's direction and supervision or in association with a principal contractor, and should have their own Employers and Public Liability insurance arrangements.

The term 'contractor' is not restricted to building Contractors. In its wider sense it includes any individual or company who enters premises to fulfil a contractual obligation agreed with the business occupying the premises, the property owner or their managing agent.

A lack of suitable control of Contractors can and does lead to accidents, property damage and injuries, not only to contractor's employees but also to ones own employees, tenants, residents and visitors. Accidents have resulted in both prosecutions and civil claims against the employing client business and against property owners or their managing agents in addition to the contractor.

The 2012/13 HSE statistics show that the construction sector employs just 5% of the working population but accounts for 10% of reported major injuries to employees and 27% of fatalities. See [hse.gov.uk/statistics/industry/construction/](https://www.hse.gov.uk/statistics/industry/construction/).



Contractors will include, but will not be restricted to:

- Builders, joiners, electricians, plumbing, heating and ventilation engineers
- Telephone engineers
- Window and contract cleaners
- Lift and escalator engineers
- Grounds maintenance staff
- IT specialists.



LAW CASES

Case law

The principle that organisations (employers), retain responsibility for the safety of Contractors working on their premises was established in ***R v Associated Octel Co. Ltd (1996)***, heard in the House of Lords.

Associated Octel was prosecuted under section 3 of the Health and Safety at Work etc Act 1974 (HSWA) for failing to ensure the safety of persons not in their employ. Their defence was that the bona fide sub contractor dictated how the task was undertaken, Associated Octel had no duty under section 3 of the HSWA and accordingly had no right to control or stipulate how the work was done.

Associated Octel appealed earlier judgements to the House of Lords who affirmed the lower courts' decisions. Whether a work activity is part of the conduct of an employer's undertaking is a question of fact. It does not depend on whether the employer engages employees or independent Contractors to carry out that work or whether control is exercised over the activity. If the work itself is part of the undertaking, meaning 'enterprise' or 'business' in this case, a duty is owed under HSWA s.3(1) to ensure that it is done without risk, subject to reasonable practicability.

Employers cannot defend themselves by relying on BFSC's to manage their operations in isolation. The Court of Appeal reaffirmed in ***Lynch v CEVA Logistics and Lynch Electrical Contractors*** (Court of Appeal 2011), that a workplace owner or occupier owes visiting Contractors and their employees a duty of care where it is able and competent to give them instructions, and must be alert to any unsafe practices of Sub-contractors.

This case exemplifies why those who employ Contractors need to fully appreciate the extent of their duties, especially if the work being undertaken is an integral part of the contracting employers business.



Legal duties

Employers have general duties to Contractors under The Health and Safety at Work etc Act 1974 and specifically under sections 2, 3, 4, 6, and 7.

The HSWA requires employers (and the self employed) to ensure that:

- Their general duties extend to providing adequate information, instruction, training and supervision (section 2)
- Their activities do not endanger persons not in their employ
- Information is given concerning potential health and safety hazards (Section 3)

Section 4 places duties on occupiers and/or owners of premises to ensure that:

- The premises, plant and substances contained in them are safe and without risks to health, and
- Where a contractor has operational control over part of a site, then there is a duty to ensure that as far as is reasonably practicable that area and any access are managed safely and without risk to health.
- Any person who designs, manufactures, imports or supplies any article for use at work shall ensure, so far as is reasonably practicable, that it will be safe and without risk to health when it is being set, used, cleaned

or maintained by a person at work (Section 6).

It shall be the duty of every employee, to take reasonable care for the health & safety of himself and of other persons who may be affected by his acts or omissions at work (Section 7).

Employers have to ensure as far as is reasonably practicable, that the Contractor is not at risk from the business. Similarly, the Contractor must ensure that the company, their employees, tenants, residents and visitors are not at risk from their activities.

In addition to the HSWA, duties also arise from the Occupiers Liability Acts 1957 (common law duties to visitors) & 1984 (duties to trespassers). The Management of Health and Safety at Work Regulations 1999 (MHSW Regs), the Construction (Design and Management) Regulations 2007 (CDM Regs), and the Workplace (Health, Safety and Welfare) Regulations 1992 cover in detail risk assessment, health and safety arrangements, competent persons, arrangements for serious and imminent danger, co-operation and co-ordination, persons working in host employer's undertakings, provision of information to employees and temporary workers, and consultations with safety representatives.

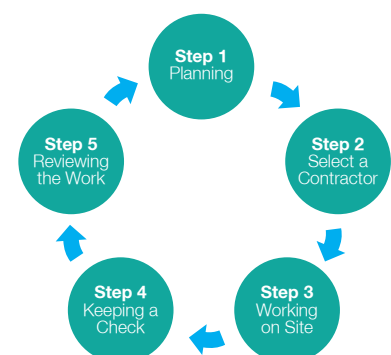
Clients and Contractors also have legal responsibilities under health and

safety regulations dealing with special hazards including:

- The Control Of Lead at Work Regulations 2002
- The Control of Asbestos at Work Regulations 2012
- The Control of Substances Hazardous to Health Regulations 2002.

The responsibility for controlling Contractors rests with line management. If you observe your contractor doing something potentially dangerous, and you have the opportunity to prevent it but do not, then you can be held partially or fully liable for a subsequent accident.

Whilst the legislation can seem overwhelming, HSE guidance (see HSG159 at [hse.gov.uk/pubns/books/hsg159.htm](https://www.hse.gov.uk/pubns/books/hsg159.htm)) summarises responsibilities as:





Planning and Communication

Many accidents involving Contractors occur because of poor planning and a failure to take into account health and safety considerations. A detailed risk assessment needs to be undertaken and communicated to all involved. For detailed guidance from the HSE, see [hse.gov.uk/pubns/indg163.pdf](https://www.hse.gov.uk/pubns/indg163.pdf). For higher risk operations such as demolition or work at height, the contractor should be asked to prepare and adhere to a method statement. This must demonstrate that all tasks have been fully considered and a detailed step by step documented approach has been recorded to manage those risks. A method statement should be produced prior to commencement of any works and should include as a minimum:-

- Location of the task and who is affected by it eg (neighbours, tenants etc)
- How will the work area be protected and access be controlled

- Will additional hazards be introduced as part of the process (eg substances harmful to health)
- Additional emergency procedures required in light of these activities

Conversely, excessive instructions and over burdensome paperwork do not guarantee safety especially if it leads to confusion.

The following offers a brief guide to effective planning and communication.

- A supply chain management process should be established from which an approved contractor and supplier list can be prepared, monitored and reviewed regularly by those involved in selecting, appointing and managing Contractors
- Examine contractor arrangements for health and safety, insurance and employee training before contracts are placed

- Appoint a project manager to manage each stage of the process and to liaise with Contractors
- Establish pre-contract stage communication links with your management and Contractors' staff
- Prior to Contractors coming on site, make them aware of your health and safety policy via formal site induction including access control procedures, fire drills and emergency arrangements, accident reporting requirements, shared facilities, authorisations for operating plant and welfare and first aid facilities.

Organisations must ensure they have a competent person on site with the necessary skills to plan, communicate, promote and manage the health, safety and welfare of all concerned throughout the duration of the works or project.



Selection of Contractors

A process of due diligence will assist in the selection of competent firms and establish their ability to carry out the work required. In addition, you should ensure that they hold current insurance protection with sufficient financial cover to indemnify them in the worst case scenario.

Not all Employers and Public Liability policies are the same and limits of indemnity can vary substantially. When validating a contractor's insurance cover, ensure it is current for the period of time work is to be undertaken and that levels of indemnity are sufficient. If you are unsure seek advice from your Insurance Broker.

The selection criteria must reflect the contractor's competence to complete the work and their management of health and safety as outlined in the latest revision of the CDM Regs 2007 and current HSE guidance.

Many organisations have a policy of only using Contractors from an "Approved List" of firms whose capability, quality of work and health and safety performance are already known. Such lists should be the subject of regular review and appraisal.

It is prudent to consider Contractors who are members of trade and professional associations and to ask for testimonials and references. Also refer to the HSE website for previous and current enforcement action against an organisation under consideration, at www.hse.gov.uk/prosecutions/. Additionally, verification of a contractor's safety policy, safety performance and accident rates should be included in any due diligence programme.

The following list can be used as an 'aide memoir' when considering appointing a contractor.

- Refer to local authorities, trade bodies, etc, for recommendations
- Always obtain copies of insurance certificates and validate the adequacy of cover of both Employers and Public Liability policies
- Seek references and information on their health and safety performance
- Validate their competency for the task to be undertaken and to manage health and safety
- Look for evidence of personnel being trained in health and safety management, such as an accredited IOSH qualification, Construction Skills Certification Scheme (CSCS) and trade qualifications
- Provide your contractor with sufficient information to undertake the contract safely.

Managing Contractors on Site

Clearly, as the Associated Octel case demonstrated, there is a legal requirement to ensure that all reasonably practicable measures are taken by employers and persons in charge of premises to reduce risks to Contractors. Contractors also have duties both as employers to their own workforce and as competent people in their own fields of expertise. The responsibility for managing risk is therefore shared between the client and the contractor.

Ensure you are advised in writing by the contractor and before any work commences, of any plans the contractor has to use Sub-contractors and that there is the same considerations to those of the principal contractor.

Consider the work to be done and the areas in which the Contractors can and cannot operate, together with clearly defined roles and parameters of work. This is normally set out in a 'Site Rules for Contractors' document in a leaflet format. Keep this simple, user friendly and ensure its contents are communicated to all concerned. Obtain signed receipts on issue of these instructions as this will aid your defence in the event of any civil or criminal proceedings.

An appointed individual within your management team should liaise with Contractors daily and communicate any information or actions to those who may be affected by the day's undertakings. Similarly, a member of the contractor's staff must be identified as responsible for supervising their work. Any concerns over their supervisory competency or effectiveness must be addressed immediately.

A dividing line can be drawn between the requirements for managing Contractors on large new build projects, major alterations including demolition and projects covered under the CDM Regs and the contractor brought in to repair a dripping tap, fit a new light fitting or washbasin for example. Common sense, practical measures can be sufficient for minor repair and alteration work so often undertaken by small competent Contractors without the requirement for constant supervision and over burdensome in-depth reviews of risk assessments and method statements.

For larger and more complex projects the points below give general guidance as to key areas of focus for managing Contractors safely on your sites.

- Contractors' employees and vehicles should be logged in and out of site
- Carry out site induction training for all contractor employees
- Include Contractors operations in safety audits and inspections, paying special attention to access and egress
- Inform your employees, tenants and residents where Contractors are working in their particular area, identifying any overlaps which may adversely affect health and safety
- Contractors' employees should be trained to recognise site dangers. Misuse of your equipment or facilities should never be allowed and hazardous substances used safely
- Where providing any plant or equipment, including as personal protective equipment (PPE) ensure this is suitable and safe
- Consider controlling high risk contractor activities using a permit to work system.

Training

The Management of Health & Safety at Work Regulations 1999 (MHSW) state that where two or more employers share a workplace, whether on a temporary or a permanent basis, each employer shall:-

- Co-operate with other employers
- Take reasonable steps to co-ordinate between other employers to comply with legal requirements
- Take reasonable steps to inform other employers where there are risks to health and safety.

Even experienced and competent Contractors will require inducting on to site and be included in training and tool box talks for any special features and hazards they may come across whilst at your premises. Where training gaps exist within Contractors' employees, agree who is responsible for rectifying that requirement. Training records are essential evidence in the defence of personal injury claims and individual records should always be retained, chronologically archived and readily retrievable.

Monitoring Contractors and maintaining control

The client or employer i.e. the business occupying the premises, the property owner or their managing agent, is responsible for monitoring the health and safety performance of the contractor throughout the duration of the works. The appropriate level of monitoring will of course vary dependant on the circumstances of the work. To maintain adequate controls it will be necessary to make sure that:

- All accidents, incidences of ill health, hazards, near miss and adverse conditions are promptly reported, recorded and investigated adhering to the host company's internal procedures. Controls should be implemented to prevent a recurrence
- Occupiers should monitor sites for incidents, including traffic accidents involving Contractors and Sub-contractors. Likewise, Contractors should be aware of their responsibilities to report accidents to the site occupier
- Routine inspections are jointly undertaken by occupiers and Contractors as work progresses
- There is periodic inspection and audit of the contractor management processes.

Regular review meetings are planned, especially during lengthy contracts. The results of any shortcomings should be shared amongst relevant parties and an action plan to address those points agreed.



Contractor Appraisal

When the contract is completed, an important decision has to be made as to whether you would offer the particular contractor(s) work in the future. An appraisal of performance, measured against key performance requirements such as quality of workmanship, timely completion, health and safety compliance, value for money, etc should be undertaken. Contractors should be made aware from the outset that their performance will be subject to a review process and that failure to meet pre-agreed requirements will affect the chances of future work. Satisfactory health and safety performance must be a pre-requisite for remaining on the 'Approved List' and/or to be considered for future contracts.

Conclusions

The management of Contractors is not as complicated or as onerous as many believe. Whether it involves large contracting organisations or the local plumber, in many ways, case law has defined clearly what the duties are for employers and individuals who engage Contractors to work for them.

For minor works and smaller projects a common sense approach should be adopted, applying the principles of good management outlined above and ensuring for all tasks that a safe system of work is adopted by the contractor, whilst ensuring that adequate insurance provision is in place to deal with any mishaps.

On larger projects, clients and Contractors must work together to achieve best practice, considering the hazards and risks fully and enforcing the appropriate controls to ensure a project is delivered safely.

QBE believe there are significant financial and reputational benefits for those organisations whose management of Contractors is a priority and a key performance indicator driven by senior management.

Further Information

Additional guidance is available via QBE's Risk Management Standard: Managing Contractors available at: QBEEurope.com/risk-solutions/general-liability

See also the HSE website at: hse.gov.uk



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